

EXHIBIT B

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 _____
6 : IN RE: NATIONAL PRESCRIPTION : MDL No. 2804
7 OPIATE LITIGATION :
8 : Case No. 17-md-2804
9 THIS DOCUMENT RELATES TO: :
10 "Case Track Seven" : Judge Dan Aaron Polster
11 _____
12 :

13 Monday, January 9, 2023

14 HIGHLY CONFIDENTIAL
15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
16

17 Remote deposition of PATRICK J. MARSHALEK,
18 M.D., commencing at 10:03 a.m., on the above date,
19 before Carol A. Kirk, Registered Merit Reporter,
20 Certified Shorthand Reporter, and Notary Public.
21

22 GOLKOW LITIGATION SERVICES
23 877.370.3377 ph | 917.591.5672 fax
24 Deps@golkow.com

1 A. Opioids have been a problem for
2 that whole period of time?

3 Q. Yes, sir.

4 A. I think to a certain extent. It's
5 hard to quantify exactly when and where.

6 Q. Your professional career has been
7 dedicated to dealing with opioids in one form or
8 another; isn't that right?

9 MR. CARDI: Form, foundation.

10 A. Can you ask that again, please.

11 Q. Sure.

12 Your professional career has been
13 dedicated to dealing with opioids in one form or
14 another; is that right?

15 A. I would say part of my career has
16 been.

17 Q. And that's been true since you
18 were licensed in 2007?

19 A. Yes.

20 Q. In 2007, West Virginia had some of
21 its historically highest rates of opioid
22 prescriptions; is that right?

23 A. I would need to see data
24 surrounding that.

1 Q. Have you ever looked at data about
2 the number of prescriptions over time in
3 West Virginia?

4 A. I have reviewed that data in the
5 past.

6 Q. What do you recall about that?

7 A. I have difficulty recalling
8 specifics.

9 Q. Have you ever looked at data
10 regarding the numbers of prescriptions over time
11 in Montgomery County, Ohio?

12 A. Not that I recall.

13 Q. You were taught in medical school
14 that pain is the fifth vital sign, right?

15 A. If I recall correctly.

16 Q. If you recall correctly, yes, you
17 were taught that pain is the fifth vital sign
18 when you were in medical school?

19 A. I really -- I don't -- I do not
20 recall specifics regarding the pain management
21 didactics.

22 Q. Okay. Have you ever worked as a
23 pharmacist?

24 A. No.

1 Q. Have you ever supervised a
2 pharmacist?

3 A. Can you define "supervised"?

4 Q. That's a great question. Can I
5 define "supervise."

6 Okay. Have you ever worked in a
7 pharmacy?

8 A. I volunteered in a pharmacy
9 previously.

10 Q. When was that?

11 A. I was in medical school. At the
12 free clinic in town.

13 Q. And what was your role as a
14 volunteer in the pharmacy?

15 A. Roughly -- just roughly preparing,
16 packaging medications up, putting them in bags.

17 Q. How long did you do that for?

18 A. I can't recall exactly how long.

19 Q. Was it more than one day?

20 A. Yes. It was over the course of
21 probably a year or two.

22 Q. And how often would you do that
23 during that year or two?

24 A. It was roughly a weekly basis.

1 Q. So once a week, you'd go work in
2 the pharmacy?

3 A. If I recall correctly.

4 Q. Okay. And for how long at a time?
5 Would you work for an entire day or a couple
6 hours?

7 A. If I recall correctly, half days
8 or so.

9 Q. Did you dispense the medication to
10 patients when you volunteered at the community
11 pharmacy?

12 A. Not that I recall.

13 Q. Did you package at any time opioid
14 medications?

15 A. No.

16 Q. Okay. So let's go back to my
17 question.

18 Have you ever had a pharmacist who
19 reported to you in a professional capacity as an
20 employee?

21 A. Can you ask that one more time?

22 Q. Sure.

23 Have you ever had, in a
24 professional capacity, a pharmacist report to

1 you as an employee of yours?

2 A. I work in multiple different
3 settings for a large health system. So I
4 wouldn't employ a pharmacist, but I work on
5 teams where pharmacists -- pharmacists are on
6 some of the teams that I work on.

7 Q. Okay. Have you ever been the boss
8 of a pharmacist?

9 A. How would you define "boss"?

10 Q. Well, do you have a boss now?

11 A. Boss. I think I have probably
12 several.

13 Q. Do you know who they are?

14 A. Yes.

15 Q. Okay. Are you the boss of anybody
16 right now yourself, professionally?

17 A. I guess it depends on how you kind
18 of utilize that term. Either from an
19 administrative capacity as a medical director or
20 a team leader in clinical settings, I would view
21 myself as kind of the leader of a team.

22 Q. Have you ever had any role in
23 setting policies for dispensing at a pharmacy?

24 A. Not that I'm aware of.

1 Q. Are you familiar with the
2 obligations that pharmacies have before
3 dispensing opioids?

4 A. Ask that again. I'm sorry.

5 Q. Sure.

6 Are you familiar with the
7 obligations that pharmacies have before
8 dispensing opioids?

9 A. No. But as a clinician with
10 prescriptive authority, I interface with
11 pharmacists and pharmacies on a regular basis.

12 Q. Are you familiar with any policies
13 or procedures that Kroger has used at any time
14 regarding dispensing opioids?

15 A. Not that I'm aware of.

16 Q. Have you ever heard the term
17 "corresponding responsibility" in the context of
18 pharmacies?

19 A. Not that I'm aware of.

20 Q. Do you know what the term
21 "corresponding responsibility" means in the
22 context of pharmacies and dispensing opioids?

23 A. I'm sorry. I want to make sure
24 I'm understanding the last part of that question

1 correctly.

2 Q. Sure. And let me ask it a
3 different way.

4 In the context of pharmacies
5 dispensing opioids, do you know what the term
6 "corresponding responsibility" means?

7 A. Not that I'm aware of.

8 Q. Do you agree that pharmacies are
9 the last line of defense against illegitimate
10 prescriptions for opioids being dispensed?

11 MR. CARDI: Form, foundation.

12 A. I want to make sure I understand
13 what you mean by "last line of defense."

14 Q. You don't understand the term
15 "last line of defense"?

16 A. In the context of your question.

17 Q. Okay. Every opioid prescription
18 that is written for an outpatient must be
19 dispensed by a pharmacy, right?

20 A. If I recall correctly.

21 Q. And in the chain of supplying
22 opioids to the public, the last opportunity to
23 determine whether an opioids prescription is
24 legitimate is at the point of dispensing by the

1 Q. Do you know what the risks -- let
2 me ask it a different way.

3 Do you know what any risk factors
4 are for substance use disorder?

5 A. One of the risks that I teach on
6 is adverse childhood experiences or traumatic
7 experiences.

8 Q. Can you think of any other risk
9 factors for substance use disorder?

10 A. Again, I want to know how we're
11 defining risks.

12 Q. However you define risk factors in
13 the context of epidemiology and diagnosing
14 substance use disorder is fine for the purposes
15 of this question.

16 A. Then I think the adverse childhood
17 experiences are something that I mentioned.

18 Q. Okay. Can you think of any other
19 risk factors for substance use disorder?

20 A. I can't recall at this moment.

21 Q. Okay. Let's talk about opioid use
22 disorder.

23 Can you think of any risk factors
24 for opioid use disorder?

1 A. I would want to answer the same.

2 Q. A risk factor for opioid use
3 disorder is adverse childhood experiences?

4 A. Yes.

5 Q. Can you think of any other risk
6 factors for opioid use disorder?

7 A. Not that I can recall at this
8 time.

9 Q. Do you treat patients for opioid
10 use disorder who use illicit opioids such as
11 heroin and fentanyl?

12 A. Yes.

13 Q. Do you ask them how they got
14 started on opioids as part of your practice?

15 A. Yes.

16 Q. Have you ever treated a patient
17 for opioid use disorder who uses heroin or
18 fentanyl whose first exposure to opioids was
19 through prescription opioids?

20 A. I just want to make sure
21 I understand that. If you could repeat it.
22 Thank you.

23 Q. Sure.

24 Of the patients that you treat for

1 opioid use disorder who use heroin or fentanyl,
2 have any of those patients had their first
3 exposure to opioids through prescription
4 opioids?

5 A. Yes. Some have.

6 Q. Do you have a ballpark in terms of
7 percentage of the patients that you treat for
8 opioids use disorder who use illicit drugs like
9 heroin or fentanyl who started using opioids
10 initially as prescription opioids?

11 MR. CARDI: Object to form,
12 foundation.

13 A. Not that I can recall.

14 Q. Have you reviewed Dr. Katherine
15 Keyes' report in the Montgomery County
16 litigation?

17 A. Not that I can recall.

18 Q. Do you have, as you sit here
19 today, any opinions or criticisms about
20 Dr. Keyes' report in the Montgomery County
21 litigation?

22 A. I'm sorry. Can you repeat that.

23 Q. Sure.

24 As you sit here today, do you have

1 And there's a quote from
2 Patrick Radden Keefe's book, Empire of Pain. It
3 says the, "The opioid crisis is, among other
4 things, a parable about the awesome capability
5 of private industry to subvert public
6 institutions."

7 Do you see that?

8 A. Yes.

9 Q. Do you agree with that sentence?

10 A. I do with respect to what we've
11 come to know about private industry's role in
12 this epidemic.

13 Q. If you look then -- the bottom of
14 the second full paragraph under that section,
15 it's actually on the upper right of the page.
16 It says "and profit-seeking" is the sentence,
17 the last sentence of that paragraph.

18 MR. CHALOS: You had it right,
19 Jon, the first time. It's on the top
20 right after those superscripts. It says
21 "and profit-seeking."

22 TRIAL TECH: Oh, I see it.

23 BY MR. CHALOS:

24 Q. Okay. It says, "And

1 profit-seeking was not entirely external to the
2 health care system. Some hospitals, clinics,
3 pharmacies, professional societies, and
4 individual healthcare professionals also
5 enriched themselves."

6 Do you see that?

7 A. Yes.

8 Q. So the Stanford-Lancet Commission
9 concluded that at least some pharmacies played a
10 role in contributing to the opioid crisis,
11 right?

12 A. I think I've stated that before.
13 I think the pill mills and those -- some of the
14 other things connected to pill mills, those are
15 clinical settings. Those are driven where --
16 those are criminal enterprises, not legitimate
17 clinical settings.

18 I think that's the -- they've done
19 a tremendous amount of damage based on the fact
20 that they kind of took their understanding of
21 how health care was delivered and manipulated it
22 in order to only seek profit and no other kind
23 of legal or ethical considerations.

24 Q. And some pharmacies, some

1 community pharmacies, not connected with pill
2 mills also contributed to the opioid crisis by
3 filling prescriptions that shouldn't have been
4 filled, right?

5 MR. CARDI: Object to form.

6 A. I don't know if I agree with that
7 based on what we talked about before.
8 Pharmacies -- unless you present me with kind of
9 direct evidence of pharmacies kind of focusing
10 solely on profit margins and otherwise kind of
11 more closely aligned with a kind of criminal
12 enterprise than a clinical enterprise, they're
13 still not in a position to question the
14 legitimacy of those prescriptions. That's an
15 incredibly challenging thing to do.

16 Q. It's your opinion that pharmacies
17 are not in a position to question the legitimacy
18 of opioids prescriptions?

19 A. I'm just not sure how they can.
20 They weren't in the doctor's office where it was
21 being written. They don't know if it was just
22 handed to that person by an office staff, you
23 know, that was just using a stack of scripts
24 that had kind of the same prescriptions stamped

1 on them, or if it was a legitimate pain
2 management practice that was doing their best to
3 take good care of the patient.

4 Q. So it's your belief that
5 pharmacies have no tools to use to determine
6 whether a prescription was written for a
7 legitimate medical purpose?

8 MR. CARDI: Object to form.

9 A. Like I said, I think they're at a
10 distinct disadvantage to question and to kind of
11 call that into question. To the extent that
12 they increasingly call that into question poses
13 other kind of unintended consequences and risks
14 related to kind of delays and delivery of much
15 needed care potentially and so on.

16 Q. So it's your view that pharmacies
17 should not question the legitimacy of an opioids
18 prescription?

19 MR. CARDI: Object to form.

20 A. I just don't know -- sorry.

21 MR. CARDI: You can proceed.

22 Object to form.

23 A. I just don't know how they can
24 since they weren't in the office where the

1 patient was being diagnosed and treated and that
2 recommendation sprang forth.

3 The list of potential explanations
4 ranges from, you know, extremely legitimate to
5 not, and how they can begin to step into and
6 investigate that and whether they should is a
7 whole other --

8 Q. And that belief that you just set
9 forth is one of the bases for your opinions in
10 this case?

11 A. I'd want to make sure I understood
12 kind of exactly what I said and how I said it.
13 The fact that this, the highlighted sentence, I
14 mean -- I've taken care of patients that sought
15 to enrich themselves.

16 So I've witnessed anyone from a
17 patient, prescriber, pharmacy, pharmacist,
18 upwards on that chain all the way up to the
19 manufacturer take steps to enrich themselves in
20 a variety of ways.

21 And oftentimes those steps
22 involved deceptive practices making it much
23 harder to determine how legitimate it is because
24 it's like a Trojan horse in some ways.